Filed 6/19/19 Marriage of Stuff & Schilders CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of STEVEN STUPP and ANNEMARIE SCHILDERS.	
STEVEN STUPP, Respondent, v. ANNEMARIE SCHILDERS, Appellant.	A152079 (San Mateo County Super. Ct. No. FAM0110799)

Several months after entry of a judgment dissolving the marriage of Steven Stupp and Annemarie Schilders, the Honorable Susan Greenberg began presiding over this matter in the family court. About a year after that, Schilders filed a statement of disqualification alleging, among other things, that Judge Greenberg failed to disclose a campaign contribution she received from one of the law firms representing Stupp about six months before she was assigned to the case. Judge Greenberg struck the statement of disqualification and immediately recused herself. Schilders did not seek writ review of the order striking the statement of disqualification.

Seven months after Judge Greenberg recused herself, Schilders filed a motion in the trial court to vacate Judge Greenberg's prior orders, arguing that because Judge Greenberg failed to disclose the campaign contribution, she was disqualified from the time she first presided over the case and all of her orders were void. The Honorable Richard DuBois, to whom the matter was assigned after Judge Greenberg's recusal,

found that the failure to disclose the contribution did not disqualify Judge Greenberg, and denied the motion to vacate. He asked Schilders's counsel to prepare the order; inexplicably, more than a year passed before Judge DuBois's order was signed or filed. Schilders now appeals from that order.

We conclude that Schilders has not shown that Judge Greenberg was disqualified from the time she first presided over the case, and therefore we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Events Preceding the Filing of Schilders's Motion to Vacate*

In September 2010, Stupp filed a petition for dissolution of his marriage to Schilders. A stipulated judgment of dissolution was entered in March 2014.[1] A month later, Schilders's attorney withdrew and was replaced by attorney Ester Adut. Then, in September 2014, Judge Greenberg began presiding over the postjudgment proceedings.

In June 2015, Adut was relieved as attorney of record for Schilders. In September 2015, Judge Greenberg appointed attorney Charles Riffle as guardian ad litem for Schilders, sua sponte, without prior notice, and over objection. Schilders filed an appeal challenging the order appointing Riffle (A146301), and petitioned for a writ of supersedeas to stay the enforcement of the order. In November 2015, we stayed enforcement of the order, and eventually we issued an alternative writ, after which the family court vacated all its orders concerning the guardian ad litem, including his appointment.[2] (See *Stupp v. Schilders* (Oct. 25, 2016, A146733 & A147151) [nonpub. opn.] at p. 5, fn. 6 (*Stupp I*).)

Meanwhile, on October 14, 2015, Adut filed a notice of limited scope representation of Schilders and a statement of disqualification of Judge Greenberg (Statement). The Statement alleged that Judge Greenberg was biased and prejudiced

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[1] Since entry of the stipulated judgment in March 2014, Schilders has initiated 18 appeals and filed six writ petitions in this matter.

[2] We now grant Schilders's unopposed request to take judicial notice of court records pertaining to her challenge to the appointment of the guardian ad litem.

against Schilders and Adut, appeared to be biased and prejudiced in favor of Stupp and one of his attorneys (Alissa Kempton), served as an attorney and material witness in the case, signed and entered orders without following the California Rules of Court, and, most significant for this appeal, failed to disclose a $1,500 contribution to her 2014 election campaign from Kempton's law firm and a $1,000 contribution from Riffle. Adut stated that she first discovered the campaign contributions on September 29, 2015.

On October 20, 2015, Judge Greenberg issued a written order striking the Statement on the grounds that it was not verified by Schilders or her attorney.[3] The order also stated that Judge Greenberg "recuse[d] herself from further participation in the [matter] in furtherance of the interests of justice and judicial efficiency."

Schilders appealed from the October 20, 2015 order, asking us to vacate the portion of the order striking the Statement. (*Stupp I, supra*, at p. 2.) We dismissed the appeal on the grounds that the order was not appealable. This is what we wrote: "Stupp moves to dismiss the appeal, contending that because the order concerns the disqualification of a judge it is reviewable only by a writ of mandate, pursuant to Code of Civil Procedure section 170.3, subdivision (d), and is not an appealable order. We agree. A claim that the trial court erred in striking a motion to disqualify is not cognizable on

[3] Adut signed the Statement under penalty of perjury and identified herself as Schilders's attorney. But, according to Judge Greenberg's October 20, 2015 order, "On June 25, 2015, this Court granted Ms. Adut's motion to be relieved as Attorney of Record for Anne Marie Schilders. Subsequently on September 15, 2015, this Court appointed Charles Riffle to serve as the Guardian Ad Litem for Anne Marie Schilders in order to represent the interests of Ms. Schilders in this matter. On the same day Ms. Adut filed the [Statement], she also filed a Notice of Limited Scope of Representation signed by Anne Marie Schilders which purportedly reinstated Ms. Adut as her attorney 'on all matters between October 13, 2015 until further notice.' However, after the appointment of the Guardian Ad Litem, Ms. Schilders lacked the authority to reinstate Ms. Adut as her attorney in this matter without the consent of her Guardian Ad Litem. Consequently, Ms. Adut is not an attorney of record for a party in this action, and lacks standing to verify a statement of disqualification pursuant to C.C.P. § 170.3." Judge Greenberg's October 20, 2015 order predated our stay of the enforcement of the order appointing the guardian ad litem.

appeal, and may be reviewed only by a writ of mandate sought within 10 days after service to parties of notice of the decision. (*People v. Panah* (2005) 35 Cal.4th 395, 444; see also 1 Karplus et al., Cal. Judges Benchbook: Civ. Proceedings Before Trial (2d ed. 2008) Disqualification of a Judge, § 7.37, p. 406 ['Once a judge has ordered a statement of disqualification stricken, the aggrieved party may seek a writ of mandate to reinstate the statement and have the challenge considered on its merits. *Hollingsworth v. Superior Court* (1987) 191 Cal.App.3d 22, 26.'].)" (*Id.* at p. 3, fn. omitted.) Schilders, however, did not file a petition for writ of mandate, and we noted that even if we regarded her notice of appeal as a writ petition, the notice was filed after the statutory deadline had passed. (*Ibid.*, fn. 5.)

B. *The Motion Underlying This Appeal*

In May 2016, more than seven months after Judge Greenberg's recusal, and while the appeal of Judge Greenberg's October 20, 2015 order striking the Statement was pending, Schilders filed a motion in the family court to vacate all the orders made by Judge Greenberg in the case, except for the part of the October 20, 2015 order in which Judge Greenberg gave notice of her recusal from further participation in the matter.[4] Schilders argued that Judge Greenberg was disqualified from the time she first presided over the case by virtue of her failure to disclose on the record a $1,500 campaign contribution she received from Kempton's firm in April 2014.

Schilders's motion was heard on July 1, 2016 by Judge DuBois, who announced his findings and ruling denying the motion from the bench, and asked Adut to prepare the order. The written order, which was not signed or filed for more than a year, tracks Judge DuBois's statement from the bench, and states, "The court denies [Schilders's] motion . . . to have all orders entered by Honorable Susan Greenberg vacated. The Court basis [*sic*] this order on the following findings: [¶] a. Judge Greenberg's failure to disclose contributions did not in and of itself cause a disqualification as the contribution[s] made

[4] We do not know why Schilders waited seven months after Judge Greenberg's recusal before moving to vacate Judge Greenberg's prior orders.

to her were not in excess of $1,500. [¶] b. Even if Judge Greenberg was subject to disqualification there is considerable case law that her orders would not be void. [¶] c. The Court does not find good cause to believe that there is any objective evidence of bias in rulings on this motion." Schilders timely appealed.

DISCUSSION

Schilders's sole contention on appeal is that Judge Greenberg was disqualified from the time she first presided over the case because she failed to disclose the $1,500 contribution from Kempton's firm, and "[a] person aware of the facts might reasonably entertain a doubt that [she] would be able to be impartial." (§ 170.1, subd. (a)(6)(A)(iii).) From this, Schilders reasons that because the orders of a disqualified judge are void and must be vacated, Judge DuBois erred in denying the motion to vacate Judge Greenberg's orders.

A. *Judicial Disqualification*

We summarize here those aspects of the law of judicial disqualification that are pertinent to this appeal.

A trial court judge "has a duty to decide any proceeding in which he or she is not disqualified." (Code Civ. Proc, § 170.[5]) The Code of Civil Procedure sets forth the grounds for disqualification, and provides, for example, that a judge shall be disqualified if "[f]or any reason . . . the judge believes his or her recusal would further the interests of justice" (§ 170.1, subd. (a)(6)(A)(i)) or if "[f]or any reason . . . [a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (§ 170.1, subd. (a)(6)(A)(iii).)

1. *Campaign Contributions*

A judge is disqualified if she received a contribution over $1,500 from a party or lawyer in a proceeding if the contribution was received in connection with an election

[5] Statutory references are to the Code of Civil Procedure unless otherwise stated. Sections 170 through 170.5 apply to "judges of the superior courts, and court commissioners and referees."

within the past six years or in connection with an upcoming election. (§ 170.1, subd. (a)(9)(A).) And a judge is disqualified if she received a contribution of $1,500 or less from a party or lawyer in a proceeding if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.[6] (§ 170.1, subd. (a)(9)(B).)

Even if a campaign contribution does not require disqualification, it may give rise to a duty of disclosure. Judges are required to disclose contributions of $100 or more made to their election campaigns by parties, attorneys, and law firms in matters before them. (§ 170.1, subd. (a)(9)(C) [requiring disclosure of "any contribution from a party or lawyer in a matter that is before the court that is required to be reported under" Gov. Code, § 84211, subd. (f)]; Cal. Code Jud. Ethics, canon 3E(2)(b)(i)[7] [requiring disclosure in a matter "on the record" of "any contribution or loan of $100 or more from a party, individual lawyer or law office or firm in that matter"].) The duty to disclose continues for two years after a judicial candidate takes the oath of office, or two years from the date of the contribution, whichever is later. (Canon 3E(2)(b)(iii).) "Disclosure of campaign contributions is intended to provide parties and lawyers appearing before a judge during and after a judicial campaign with easy access to information about campaign contributions that may not require disqualification but could be relevant to the question of disqualification of the judge." (Advisory Com. Commentary to Canon 3E(2)(b).)

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[6] "[T]he $1,500 disqualification threshold 'applies to the individual lawyer appearing in the matter.' " (*Eith v. Ketelhut* (2018) 31 Cal.App.5th 1, 13 (*Eith*), quoting Supreme Court Committee on Judicial Ethics Opinions (CJEO) Formal Opinion 2013-003 at p. 11 [www.judicialethicsopinions.ca.gov/wp-content/uploads/cjeo_formal_opinion_2013-003.pdf].) " '[T]he Legislature did not intend the $1,500 threshold for disqualification to apply to aggregated contributions from multiple individuals from the same law firm, nor to all individuals practicing law in a contributing law firm. . . .' [Citation.] '[M]andatory disqualification for individual attorney contributions over the $1,500 threshold, together with discretionary disqualification for aggregated and law firm contributions, sufficiently ensure the public trust in an impartial and honorable judiciary.' " (*Id.* at pp. 13-14.)

[7] Citations to "Canons" refer to the California Code of Judicial Ethics.

2. *Recusal and Challenges for Cause*

A judge who determines that she is disqualified must recuse herself and not further participate in the proceeding, unless the disqualification is waivable and waived in writing. (§ 170.3, subd. (a)(1).) If grounds for disqualification first arise or are first learned by the judge after the judge has ruled in a proceeding but before she has completed judicial action in that proceeding, the judge shall disqualify herself unless the grounds for disqualification are waived. (§ 170.3, subd. (b)(4); *Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, 45 (*Hayward*).)

If a judge who should disqualify herself fails to do so, a party may file a "written verified statement . . . setting forth the facts constituting the grounds for disqualification of the judge." (§ 170.3, subd. (c)(1).) The issue of disqualification should be raised when the facts constituting the grounds for disqualification are first discovered, and preferably before a matter is submitted for decision. (*Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 424 (*Urias*).) But if a party does not discover the grounds for disqualification until after an order or judgment is entered, "a statement of disqualification is timely if submitted at the 'earliest practicable opportunity' after the disqualifying facts are discovered." (*Id.* at p. 425.)

A challenged judge is authorized to order the statement of disqualification stricken under certain circumstances, including for lack of verification. (§ 170.4, subd (b); *Bompensiero v. Superior Court* (1955) 44 Cal.2d 178, 183; *Hayward*, *supra*, 2 Cal.App.5th at p. 37.)

If the statement of disqualification is not stricken, the judge may request that another judge act in her place without conceding disqualification (§ 170.3, subd. (c)(2)), or file a consent to disqualification or file a written verified answer admitting or denying the facts alleged in the statement of disqualification. (§ 170.3, subd. (c)(3).) Failure to file a consent or answer within 10 days of the filing or service of the statement of disqualification is deemed consent to disqualification. (§ 170.3, subd. (c)(4).)

If a judge who is challenged does not recuse herself, a different judge must determine the question of disqualification. (§ 170.3, subds. (c)(5) & (6).) "The

determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (§ 170.3, subd. (d).) The petition must be filed within 10 days after service of written notice of entry of the order determining the question of disqualification. (*Ibid.*) Our Supreme Court wrote that it has "repeatedly held" that writ review under section 170.3, subdivision (d) "provides the exclusive means for seeking review of a ruling on a challenge to a judge." (*People v. Panah*, *supra*, 35 Cal.4th at p. 444.) Section 170.3, subdivision (d), promotes fundamental fairness by ensuring that the parties receive as speedy an appellate determination as possible through a petition for writ of mandate (*People v. Hull* (1991) 1 Cal.4th 266, 273) and forecloses a claim on appeal that a motion for disqualification on grounds set forth in section 170.1 was erroneously denied. (*People v. Brown* (1993) 6 Cal.4th 322, 335.)

3. *Effect of Disqualification*

The orders of disqualified judges are void and must be vacated. (*Hayward*, *supra*, 2 Cal.App.5th at p. 54; *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 780-781 (*Christie*).) "[D]isqualification occurs when the facts creating disqualification arise, not when the disqualification is established." (*Christie*, *supra*, 135 Cal.App.4th at p. 776.) "[I]t is the *fact* of disqualification that controls, not subsequent judicial action on that disqualification." (*Id.* at p. 777.) "A party who seeks to declare a judgment void on the ground the judge was disqualified must allege and prove facts which clearly show that such disqualification existed." (*Urias*, *supra*, 234 Cal.App.3d at p. 424.) Absent good cause, the judge who replaces a disqualified judge shall not set aside the rulings of the previous judge that were made before the disqualification. (§ 170.3, subd. (b)(4).)

B. *Analysis*

1. *Appealability*

After Schilders filed her opening brief, Stupp moved to dismiss this appeal. His primary argument is that Schilders's motion to vacate and her subsequent appeal rest on

her contention that Judge Greenberg was disqualified.[8] In ruling on Schilders's motion, Judge DuBois determined that Judge Greenberg was not disqualified by virtue of her failure to disclose campaign contributions. Because Judge DuBois's order is one determining the question of disqualification, Stupp concludes, under section 170.3, subdivision (d), it can be reviewed only by writ of mandate and is not appealable. Schilders argues that she seeks review of an order denying her motion to vacate, that the motion was not a request for Judge DuBois to determine whether Judge Greenberg was disqualified, and that the order is appealable.

Stupp's argument has some merit, but appellate courts have reviewed orders determining disqualification in connection with appeals from orders on motions to set aside another judge's orders, even absent petitions for writ of mandate. *Rossco Holdings, Inc. v. Bank of America* (2007) 149 Cal.App.4th 1353 (*Rossco Holdings*) provides an example. In *Rossco Holidngs*, one party to litigation moved to compel arbitration. (*Id.* at p. 1355.) The trial court judge granted the motion, arbitration proceeded, and the parties then filed cross-petitions to vacate and confirm the arbitration award. (*Ibid.*) At that point, the trial court judge disclosed that he had conversations about possible employment as a dispute resolution neutral before he ruled on the motion to compel arbitration, and recused himself.[9] (*Id.* at pp. 1358-1359.) The matter was assigned to a new judge and the party that was unsuccessful at arbitration moved to vacate the order compelling arbitration on the grounds that the first judge was disqualified when the order

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[8] Stupp also argues that we should dismiss the appeal because we have already ruled on the underlying issue of Judge Greenberg's disqualification. This argument lacks merit. We have not ruled on the underlying issue of Judge Greenberg's disqualification; rather, we ruled that Schilders could not appeal from Judge Greenberg's October 20, 2015 order striking the Statement. (*Stupp I*, *supra*, at pp. 3, 5, fn. 6.)

[9] Section 170.1 provides that a judge is disqualified if, within the past two years he "participated in[] discussions regarding prospective employment or service as a dispute resolution neutral" (§ 170.1, subd. (a)(8)(A)) and "[t]he matter before the judge includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral." (§ 170.1, subd. (a)(8)(A)(ii).)

was made. (*Id.* at p. 1359.) The second judge determined that the order compelling arbitration was entered at a time when the first judge was disqualified, and was therefore void. (*Id.* at p. 1362.) The Court of Appeal concluded that the order was properly vacated, and affirmed. (*Id.* at p. 1364.)

We deny the motion to dismiss. But that does not ultimately benefit Schilders, because, as we explain below, we conclude that she has not established that Judge Greenberg was disqualified from the time she began presiding over the case.

2. *Merits*

a. *Standard of Review*

As a general matter, a ruling on a motion to vacate will be disturbed on appeal only where there is a clear showing of abuse of discretion and a manifest miscarriage of justice. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1283.) We review decisions regarding the disqualification of a judge under section 170.1 for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 237.) But where the underlying facts are not in dispute, as here, it is a question of law whether a judge is disqualified under section 170.1 on the ground that a person aware of the facts would reasonably doubt the judge's impartiality. (*Sincavage v. Superior Court* (1996) 42 Cal.App.4th 224, 230.)

b. *The Effect of Judge Greenberg's Recusal*

Schilders argues that by recusing herself without contesting the allegations in the Statement, Judge Greenberg conceded the facts alleged within it and thus effectively determined that she was disqualified from the time she first presided over the case. From this, Schilders concludes that there was no need for Judge DuBois to make any determination on disqualification: that determination had already been made, and all that remained for Judge DuBois was to set aside Judge Greenberg's orders, which were void.

Schilders's argument relies on *Hayward*, where a judge's failure to answer a statement of disqualification was deemed a concession of disqualification on the factual bases alleged in the statement. (*Hayward, supra,* 2 Cal.App.5th at p. 39.) But *Hayward* is inapposite, because there the statement of disqualification had not been stricken. (See *id.* at pp. 26-29.) Here, Judge Greenberg did strike Schilders's Statement, and once she

did, it was a nullity. Judge Greenberg could not consent to it or answer it. (*Hollingsworth v. Superior Court*, *supra*, 191 Cal.App.3d at p. 26.)

Because a judge has a duty to hear all proceedings except those in which she is disqualified (§ 170), the recusal establishes Judge Greenberg's disqualification from the date of her recusal onward. Judge Greenberg gave no specific reasons for her determination, except that her recusal was "in furtherance of the interests of justice and judicial efficiency." (See Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7.18, p. 415 [judge not required to provide reasons for disqualification in notice of recusal].) Nor did she state that her disqualification preceded the date of recusal. In sum, the recusal here is not a concession of the truth of the allegations in the Statement.

c. *The Effect of the Statement*

Schilders contends that Judge Greenberg's striking of the Statement was of no effect, so even though the Statement was stricken, its allegations must be taken as true. She argues that when the trial court vacated the order appointing the guardian ad litem, it also vacated the basis on which Judge Greenberg had stricken the Statement. Thus, she suggests, the Statement was somehow un-stricken and reinstated in the record. We are not persuaded. Schilders disregards the fact that the appointment had not been vacated at the time the Statement was stricken, and she cites no authority to support her claim that the Statement and its allegations were renewed.[10]

And in any event, if Schilders wanted a determination whether Judge Greenberg properly struck the Statement or a determination of the merits of the Statement, Schilders was required to file a timely petition for writ of mandate from the order striking the

[10] In her reply brief, Schilders advances a new argument. She claims that because she had appealed the order appointing Riffle before Judge Greenberg struck the Statement, his appointment had been stayed and was of no effect at the time of the striking. Because the striking was based on Riffle's authority under the order appointing him, the striking was void on its face; therefore the allegations in the Statement stand unchallenged. This argument is untimely, and we do not consider it further. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295 ["we will not address arguments raised for the first time in the reply brief"].)

Statement. (*Stupp I, supra,* at p. 3; see *Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 75 [order striking a statement of disqualification is not appealable; it may only be challenged by a petition for writ of mandate under § 170.3, subd. (d)].) Schilders did not do that. Instead, she waited seven months and then sought to vacate Judge Greenberg's orders by filing a motion in the trial court based on the allegations in the Statement.[11] We will not now review the striking of the Statement, nor the allegations contained in it.[12]

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[11] The exhibits attached to the motion to vacate included a copy of the October 14, 2015 Statement and copies of October 9, 2015 printouts from the Secretary of State's web site.

[12] The case of *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965 (*PBA*) discusses the importance of seeking review of disqualification statements by writ petition, rather than waiting to some later time to move to set orders aside. In *PBA*, a party filed a declaration to disqualify the judge for cause. (*Id.* at p. 970.) The judge ordered the declaration stricken under section 170.4. (*Ibid.*) In the following months, the party filed additional declarations to disqualify, each of which was stricken by that judge or denied by another judge. (*Ibid.*) Eventually, a fifth declaration to disqualify the same judge was filed, and on that same day the challenged judge "recused himself . . . pursuant to section 170.1, subdivision (a)(6), 'in furtherance of the interests of justice.' " (*Ibid.*) The case was then transferred to a new judge, and the party brought a motion to set aside all the orders made by the first judge from the time he was assigned to the case, on the grounds that the first judge had been effectively disqualified as of the date of the first disqualification declaration. (*Ibid.*) The new judge denied the motion, and the Court of Appeal concluded that the party was precluded by section 170.3, subdivision (d) from seeking review of the declarations by motion in the trial court, or by appeal after the final judgment. (*Id.* at p. 971.)

The facts of *PBA* differ from our case in this respect: there, the first judge continued to preside over the case for over a year after the first declaration to disqualify was submitted (*PBA, supra*, 112 Cal.App.4th at p. 970), while in our case Judge Greenberg recused herself immediately after the Statement was submitted. In *PBA*, by failing to seek a determination of disqualification by writ petition based on the first declaration and waiting until after the judge recused himself to seek to vacate all his orders, the party undermined the salutary purposes of writ review. As the *PBA* court wrote, the purpose of the writ review requirement is " 'to eliminate the waste of time and money which would flow from continuing the proceeding subject to its being voided by an appellate ruling that the disqualification decision was erroneous, [and promote] fundamental fairness by denying the party seeking disqualification a second "bite at the

d. *Determination by Judge DuBois*

In the absence of a judicial concession or determination that, on the basis of the allegations in the Statement, Judge Greenberg was disqualified from the time she first presided over the case, Schilders's motion to vacate all of Judge Greenberg's orders was in effect a request that Judge DuBois decide the issue of disqualification.

In connection with her motion to set aside Judge Greenberg's orders, Schilders presented unrefuted evidence that in April 2014, the Committee to Elect Susan L. Greenberg Judge 2014 received a contribution of $1,500 from Robin, Ferguson & Kempton, LLP, the law firm of one of Stupp's trial attorneys, and that Judge Greenberg began presiding over the underlying matter in September 2014, but did not at any time disclose the contribution to the parties in this matter.[13]

Judge Greenberg unquestionably had an ethical and statutory duty to disclose on the record, as soon as possible after she began presiding over the case, the $1,500 campaign contribution she had received from Kempton's firm. (§ 701.1, subd. (a)(9)(C); Canon 3E(2)(b)(i); CJEO Formal Opinion 2019-013 at p. 8

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apple" if he loses on the merits but succeeds on appeal from the disqualification order.' " (*Id.* at p. 971, quoting *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 230.)

Although the facts of our case are different, the effect is much the same: by failing to file a writ petition when Judge Greenberg struck the Statement, by then waiting seven months to file a motion to vacate, by not promptly arranging to have a written version of Judge DuBois's order prepared and filed, Schilders prevented a prompt determination of the disqualification issue and allowed this heavily litigated matter to proceed, subject to previous orders being later voided. Further, Schilders had separately appealed several of Judge Greenberg's orders *before* she filed her motion to vacate, and thus she essentially took two opportunities to challenge those orders—once by appeal, and once by appeal of the motion to vacate.

[13] Schilders discusses only one campaign contribution that could be relevant to Judge Greenberg's disqualification when she began presiding over this case: the contribution from Kempton's firm. Thus, although Schilders refers to Judge Greenberg's failure to disclose the contribution from Riffle, that failure to disclose could not have been disqualifying at the time Judge Greenberg first presided over the case, because Riffle played no role until he was appointed guardian ad litem, which occurred much later.

[http://www.judicialethicsopinions.ca.gov/wp-content/uploads/CJEO-Formal-Opinion-2019-013.pdf].) But the firm's contribution is not disqualifying under section 170.1, subdivision (a)(9)(A), because it not in excess of $1,500. *Eith, supra,* Cal.App.5th 1 is instructive on this point. There, the trial court judge signed a judgment for defendants on the same day he was admonished by the Commission on Judicial Performance for failing to disclose campaign contributions. (*Id.* at p. 12.) The plaintiffs then moved to disqualify the judge for cause under section 170.1; some days later the judge entered an order stating that he did not concede the allegations, but was recusing himself. (*Ibid.*) Plaintiffs made a motion for new trial, arguing that the judgment was void because the first judge was disqualified by virtue of his failure to disclose contributions from defense counsel firm, partners or staff attorneys in the total amount of $2,600 (contributions of which they had only recently learned), and accordingly they were denied their right to a fair trial. (*Id.* at pp. 12-13.) The judge to whom the case was then assigned denied the motion, ruling that the first judge was not disqualified when he signed the judgment, and plaintiffs appealed. (*Id.* at p. 12.) The Court of Appeal affirmed, ruling that since none of the lawyers representing defendants contributed more than $1,500 to the first judge's campaign, the mandatory disqualification provision did not apply. (*Id.* at pp. 13-14.) Schilders cites no authority holding that disqualification necessarily follows from the failure to disclose the receipt of a contribution that is not itself disqualifying.[14]

Apparently recognizing that the failure to disclose does not by itself suffice to disqualify Judge Greenberg from the time she first presided over the case, Schilders

[14] Beyond the duty to disclose the contribution she received from Kempton's firm, Judge Greenberg had an ethical and statutory duty to disclose the $1,000 contribution she received from Riffle before appointing him to be guardian ad litem. (§ 170.1, subd. (a)(9)(C); Canon 3E(2)(b)(i); see *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 47 ["A guardian ad litem is not a party to the action, but is the party's representative and is an officer of the court. . . . ' "[A] guardian ad litem's role is more than an attorney's but less than a party's." ' "].) We do not excuse the non-disclosure of Riffle's contribution, but it does not bear on the issue before us, which is whether Judge Greenberg was disqualified from the time she first presided over the case.

claims that Judge Greenberg's failure to disclose the contribution from the Kempton firm results in a situation where "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial" (§ 170.1, subd. (a)(6)(A)(iii)), but she simply asserts the point and does not show or explain why that is the case. Schilders's failure to expand on the point defeats her claim.[15] (*Urias*, *supra*, 234 Cal.App.3d at p. 424 [party seeking to declare a judgment void on the basis of judge's disqualification "must allege and prove facts which *clearly* show that such disqualification existed" (italics added)]; see *Eith*, *supra*, 31 Cal.App.5th at p. 14 [disqualification not shown where party fails to show that a person aware of judge's failure to disclose contributions totaling $2,600 from a party's law firm would reasonably doubt the judge's impartiality].)[16]

In sum, Schilders has failed to show that Judge Greenberg was disqualified from the time she first presided over the case, and therefore we cannot conclude Judge DuBois's determination was in error.[17]

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[15] We are not persuaded by Schilders's claim that Judge Greenberg's failure to disclose the contribution from Kempton's firm impaired Schilders's right to file a peremptory challenge to Judge Greenberg under section 170.6, subdivision (a)(2). The disclosures required by Canon 3(E)(2) are those "reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1," which relates to disqualification for cause. (Canon 3(E)(2)(a).) The disclosures do not implicate peremptory challenges under section 170.6. (*Brown v. American Bicycle Group LLC* (2014) 224 Cal.App.4th 665, 672-673.)

[16] Our Supreme Court has written that "generally a violation of a canon [of judicial ethics] will constitute conduct below the standards expected of California judges" and that "[t]he failure of a judge to comply with the canons 'suggests performance below the minimum level necessary to maintain public confidence in the administration of justice.' " (*Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 662, 663.) But such a suggestion does not mandate disqualification. (See *Eith*, *supra*, 31 Cal.App.5th at pp. 12-14 [judge who is publicly admonished by Commission on Judicial Performance for failure to disclose contributions made to his campaign by lawyers who appeared before him after the election is not automatically disqualified from a case in which he failed to disclose such contributions].)

[17] As we have described, Schilders is unwavering in her position that Judge Greenberg was disqualified from the time she first presided over the case and that

e. *Bias*

Judge DuBois further determined that there was no objective evidence of bias in Judge Greenberg's rulings. Schilders does not specifically challenge this portion of his ruling on appeal. But in her opposition to Stupp's motion to dismiss the appeal, Schilders claims there is evidence of bias against her. She points to four orders by Judge Greenberg that were reversed or vacated after review by this court, including orders concerning the appointment of the guardian ad litem. "The mere fact that the trial court issued rulings adverse to [Schilders] on several matters in this case, even assuming one or more of those rulings were erroneous, does not indicate an appearance of bias, much less demonstrate actual bias." (*Brown v. American Bicycle Group, LLC*, *supra*, 224 Cal.App.4th at p. 674.) Schilders also complains in her reply brief that Judge Greenberg displayed bias by making orders, including changes to child custody without permitting Schilders "to present live testimony, despite repeated requests for an evidentiary hearing." But she does not provide any information in this appeal about the circumstances in which she requested to present live testimony or in which Judge

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therefore all her orders are void. Thus, Schilders contends that section 170.3, subdivision (b)(4) does not apply. (By its terms, section 170.3, subdivision (b)(4) applies "[i]n the event that grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding but before the judge has completed judicial action in a proceeding." It does not apply if the judge knew or should have known of the grounds for disqualification before ruling and simply failed to disqualify herself in a timely manner. (*Hayward*, *supra*, 2 Cal.App.5th at p. 45; *Rossco Holdings*, *supra*, 149 Cal.App.4th at pp. 1363-1364; see also Rothman, *supra*, § 7.5, p. 399.)) Accordingly, Schilders does not argue that there is good cause under section 170.3, subdivision (b)(4) to vacate the orders Judge Greenberg made during the time she was not disqualified (i.e., before she recused herself on October 20, 2015). We view that argument as forfeited and do not discuss it further. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived"]; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) ¶ 9:21, p. 9-6.)

Greenberg declined those requests, so we have no basis to conclude that those rulings demonstrate bias, and we decline to do so.[18]

We note that the underlying matter has been intensely litigated since entry of the stipulated judgment more than five years ago. Schilders points out that all of Judge Greenberg's procedural orders are moot, and she has not identified any substantive order by Judge Greenberg that remains in effect, much less one in effect that reflects bias against her or a miscarriage of justice. The substantive order on which Schilders focuses most in this appeal is the appointment of Riffle as guardian ad litem, which was soon stayed and later vacated after Schilders sought relief from this court. Schilders previously appealed other substantive orders by Judge Greenberg. Some of them were affirmed (see *Stupp v. Schilders* (May 23, 2017, A145598) [nonpub. opn.] at p. 18; *Stupp v. Schilders* (May 30, 2018, A146301 & A148051 [nonpub. opn.] at p. 23), and several were mooted, reversed, or vacated.

We do not condone Judge Greenberg's non-disclosure of campaign contributions. We conclude, however, that Schilders has not shown that she is entitled to the relief she seeks in this appeal.

DISPOSITION

The order appealed from is affirmed. The parties shall bear their own costs on appeal.

[18] In a previous appeal we considered and rejected Schilders's arguments that Judge Greenberg's denials of Schilders's ex parte application for attorney's fees and request for a hearing on the issues raised in the ex parte application were evidence of bias against her. (*Stupp v. Schilders* (May 30, 2018, A146301 & A148051) [nonpub. opn.], at p. 8 [discussing trial court orders that this court affirmed in *Stupp v. Schilders* (June 14, 2017, A145598) [nonpub. opn.].) In that same opinion, we also considered and rejected her argument that remarks made by Judge Greenberg to Schilders's counsel at a hearing did not show a predisposition against Schilders. (*Id.* at pp. 8-9.)

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.

A152079, *Stupp v. Schilders*